

**WILKOFSKY, FRIEDMAN, KAREL & CUMMINS**

ATTORNEYS AND COUNSELORS AT LAW

JONATHAN J. WILKOFSKY ♦  
MARK L. FRIEDMAN ♦  
DAVID B. KAREL ♦ ♦ ▲ (RETIRED)  
HARRY A. CUMMINS ♦ ♦ ▲

ROMAN RABINOVICH ♦ ♦

KEVIN A. COLES □ OF COUNSEL  
CATHERINE L. CREAGER □ OF COUNSEL  
KEITH A. SELDIN ♦ ♦ OF COUNSEL  
R. RAY ORRILL, JR. • OF COUNSEL  
MICHAEL D. BARNES □ OF COUNSEL  
LESLIE JONES-THOMAS ♦ OF COUNSEL  
DAVID C. INDIANO ◊ ▼ OF COUNSEL  
JEFFREY M. WILLIAMS ▼ OF COUNSEL  
LESLEY E. LITTLE ■ OF COUNSEL

□ ADMITTED CT  
\* ADMITTED FL  
• ADMITTED LA  
□ ADMITTED NC  
◊ ADMITTED NJ  
♦ ADMITTED NY  
◊ ADMITTED OH  
▲ ADMITTED PA  
▼ ADMITTED PR  
■ ADMITTED TX

299 BROADWAY • SUITE 1700  
NEW YORK, NEW YORK 10007  
TEL: (212) 285-0510 / (888) 285-0510  
FAX: (212) 285-0531 / (877) 285-1341

[www.wfkclaw.com](http://www.wfkclaw.com)

**CONNECTICUT OFFICE:**  
1 ELIOT PLACE, 3<sup>RD</sup> FL  
FAIRFIELD, CT 06824

**FLORIDA OFFICE:**  
270 SOUTH CENTRAL BLVD, STE 203  
JUPITER, FL 33458

**LOUISIANA OFFICE:**  
2800 VETERANS MEMORIAL BLVD, STE 204  
METAIRIE, LA 70002

**NORTH CAROLINA OFFICE:**  
1909 J.N. PEASE PL, STE 202  
CHARLOTTE, NC 28262

**NEW JERSEY OFFICE:**  
4499 ROUTE 27  
KINGSTON, NJ 08528

**PENNSYLVANIA OFFICE:**  
1835 MARKET STREET, SUITE 2700  
PHILADELPHIA, PA 19103

**PUERTO RICO OFFICE:**  
207 DEL PARQUE STREET, 3<sup>RD</sup> FL  
SAN JUAN, PR 00912

**TEXAS OFFICE:**  
2229 SAN FELIPE, STE 1000  
HOUSTON, TX 77019

February 10, 2021

**VIA ECF**

Honorable Judge Vernon S. Broderick  
Thurgood Marshall  
United States Courthouse  
40 Foley Square  
New York, New York 10007

**APPLICATION GRANTED  
SO ORDERED**

**VERNON S. BRODERICK**

**U.S.D.J. 2/11/2021**

The June 10, 2021 post-discovery conference is  
adjourned until September 3, 2021 at 12 PM.

Re: Allied Wine Corp., and Corner  
Fairground, Inc. v. Evanston  
Insurance Company  
Docket No.: 1:20-CV-01365  
Our File No.: 19J155

Dear Honorable Judge Broderick:

This office represents the Plaintiff Corner Fairground in the above matter. I am writing jointly with the consent of Defendant Evanston Insurance Company. In accordance with Your Honor's Individual Rules and Fed R. Civ P. 16(b)(4), the parties respectfully submit this joint letter to request an extension of the deadline for completion of all fact discovery from the current deadline of February 12, 2021, to April 12, 2021. The parties also request that expert discovery similarly be adjourned by approximately 60 days, and that the Court adjourn the post discovery conference with the Court currently scheduled for June 10, 2021 to August 30, 2021. There have been no previous requests for extension of these deadlines, and both parties consent to the request extension of time. A proposed Revised Scheduling Order is attached.

The parties respectfully submit that good cause exists for this requested extension of time for the following reasons:

The case involves a property insurance claim, wherein Plaintiff alleges that a collapse occurred on March 12, 2019, followed by another collapse on May 9, 2019. Coverage disputes exist as to both events.

The parties have worked, and continue to work, to complete fact discovery as follows:

**Written Discovery**

- Plaintiff served interrogatories and requests for production of documents on Defendant on May 28, 2020; Defendant answered said discovery demands on June 23, 2020.
- Defendant served its first set of interrogatories and requests for production of documents on Plaintiff on June 4, 2020; Plaintiff partially answered said discovery demands on July 20, 2020.
- Defendant issued a good faith demand in connection with Plaintiff's July 20, 2020 discovery responses on August 28, 2020; Plaintiff partially answered said good faith demand on October 16, 2020.
- Plaintiff supplemented its response to Defendant's first request for the production of documents on December 31, 2020.
- Defendant issued a second good faith demand in connection with Plaintiff's July 20, 2020 discovery responses on January 12, 2021; Plaintiff has agreed to supplement its responses, but has not done so yet.
- Defendant issued its second set of interrogatories and requests for production of documents on Plaintiff on January 26, 2021 in relation to a discrete issue first raised by Plaintiff on January 21, 2021 – identifying the person who allegedly gave notice of the second claim and means by which they did so; Plaintiff has not responded to these discovery demands yet.

**Non-Party Discovery**

- Defendant has issued document subpoenas to six non-parties, including the Plaintiff's public adjuster and estimator, engineer, roofers and mason. Despite multiple attempts, no discovery has been obtained from the Plaintiff's roofers or mason.
- The roofers (S&T Roofing a/k/a TMM Roofing) have failed to appear or respond to subpoenas served upon them on December 14, 2020 or January 27, 2021. The roofers have also not responded to follow up communications between January 5, 2021 and January 12, 2021.
- Multiple attempts have also been made to serve "Top Notch Mason", however, this entity is not registered with the New York Secretary of State. Defendant has attempted to have this entity served at two separate addresses provided by the Plaintiff, without success. The mason has also not responded to communications between January 18, 2021 and January 21, 2021. On February 3, 2021, Plaintiff supplied to Defendant an alternate address for Top Notch Mason.
- Plaintiff has not sought any non-party discovery.

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### **Depositions**

- The deposition of Moshe Schwartz ("Schwartz"), Manager of Corner Fairground/Plaintiff, was completed on January 4, 2021.
- A non-party deposition was taken of Abe Schwartz ("Abe"), Allied Wine employee and maintenance supervisor of the subject property was completed on January 12, 2021.
- Harvey Goodman, claims examiner, was deposed on January 21, 2021.
- Plaintiff requested the deposition of Defendant's underwriter on February 4, 2021; due to the serious illness and hospitalization of the underwriter's family member, the parties are working to schedule a date.

### **Site Inspection**

- A site inspection of the property took place on January 4, 2021.

Unfortunately, the parties have experienced delays in completing fact discovery. Currently, Mr. Schwartz is in the process of gathering and providing responses to documents requested at his January 4, 2021 deposition. Further, Plaintiff is awaiting the transcript of Mr. Goodman.

Once the transcript is received, Plaintiff will be reviewing to determine if Plaintiff will seek to Amend the complaint for breach of New York's Unfair Claims Practices Act. Defendant contends that there is no cognizable private cause of action under said act and reserves all rights in the event that Plaintiff determines that it will seek to Amend its complaint.

The parties respectfully request that the Court grant their request for an extension of the discovery schedule as follows:

- All fact discovery is to be completed no later than April 12, 2021;
- Plaintiff's expert disclosures, reports and underlying documents shall be served on Defendant by May 12, 2021.
- Defendant's expert disclosures, reports and underlying documents shall be served on Plaintiff by June 14, 2021.
- All expert discovery, including depositions, shall be completed by August 23, 2021;
- Post discovery conference to take place on August 30, 2021

In light of the outstanding items mentioned above and given, the parties respectfully submit that good cause exists for extending the foregoing deadlines.

If you have any questions, please do not hesitate to contact the undersigned.

Very truly yours,  
WILKOFISKY, FRIEDMAN,  
KAREL & CUMMINS

By:   
ROMAN RABINOVICH